IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.300 OF 2003

Mast. Nichil Nanu Pednekar,
since minor represented by his
natural guardian Smt.Chagan Nanu
Pednekar, major of age, Indian
National, residing at B-301,
Staircase -4, Dhanlaxmi Nagar,
Bhatulem,Panaji,Goa ... **PETITIONER**

VERSUS

1. Dy. Collector & S.D.O.
   Panaji, having his office
   at Collectorate Bldg.
   Panaji, Goa;

2. State of Goa,
   through the Chief Secretary
   of Govt. of Goa, having his
   office at Secretariat,
   Panaji, Goa;

3. The Director,
   Directorate of Social Welfare,
   Government of Goa;

4. The Chairman,
   Scrutiny Committee for
   Verification of Caste
   Certificate;

5. Director,
   Directorate of Technical
   Education having its office
   at Alto Porvorim,
   Bardez, Goa;

6. Union of India,
   through Ministry of
   Home Affairs, Government
   of India, North Block,
   New Delhi ... **RESPONDENTS.**

Mr. S.D. Lotlikar, Sr. Advocte, with Mr.A.D. Bhobe, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General, with Ms. S. Sabnis, Addl. Government Advocate, for the Respondents Nos. 1, 2, 3 and 5.

Mr. V.P. Thali, Senior Central Government Standing

Counsel, for the Respondent No.6.

CORAM : F.I. REBELLO &
P.V. HARDAS,JJ.

DATED : JULY 14,2003.
JULY 15,2003.

ORAL JUDGMENT (Per **F.I. REBELLO,J.)**

Rule. Respondents waive service. Heard forthwith.

2. The Petitioner, a student, had applied for admission to a professional College in the State of Goa. He had also applied for the Backward Class Certificate. A copy of the Certificate which was applied for but does not form part of the Petition, has been handed over to the Court by the learned Advocate General. In the Certificate which is dated 30th June, 2003 it is set out as under:-

> " This is to certify that he as on the date of issue of this certificate belong to the person/Section (Creamy Layer) mentioned in Column of the Schedule to the Government of India, Department of Personnel and Training O.M. No.36012/22/93/ESTT/SCT dated 8-9-93 ".

From the averments in the Petition it is clear that the Petitioners are both employees

working with the Respondents in the Office of Respondent No.2. The salaries of both together work out to Rs.2,06,347/-. It is the Petitioner's contention that if the O.M. dated 8th September, 1993 and the Annexure to it is considered, then employees holding either Class III or Class IV posts in Government service will not fall in the Creamy Layer by considering their salary income unless the parents have income which is more than Rs.1,00,000/- other than from salaries or agriculture. It is his contention that they have no income other than those from salaries. Also there is no income from agricultural land. In these circumstances, it is contended that he is entitled to a Certificate as belonging to Backward Class, Non-Creamy Section.

3. As there were disputes as to the correct interpretation of O.M. more specifically in the Petition filed in this Court and which was dismissed, being Writ Petition No.221 of 2001 by one Gomantak Bahujansamaj Parishad and in respect of which S.L.P. is pending before the Apex Court and in the issue framed therein, notice was given to the Union of India, Respondent No.6, to file Affidavit and explain their position.

4. One Shri Prahlad Kumar, Director of

Ministry of Social Justice and Empowerment (Backward Class Division) has now filed an Affidavit setting out that in O.M. dated 8-9-1993, Entry VI amongst other Entries specifies the criterion for application of the rule of exclusion of socially backward classes and other backward classes. It is not specifically set out as to whether persons holding posts in Class III or Class IV in Government service, either the State or the Centre, do not fall in the Creamy Layer. It is, however, the contention of the Standing Counsel for Respondent NO.6 before this Court that persons holding Class III or Class IV will not fall in the Creamy Layer if they do not have income other than from salary or agriculture, of more than Rs.1,00,000/-.

5. Considering that contention, the Union of India was called upon to file additional Affidavit to clarify whether Class III and Class IV employees fall within the Creamy Layer and also whether the income as set out in Clause VI could be made applicable to them. A fax copy of the Affidavit sworn by Shri Sarvesh Rai, Dy. Secretary of Ministry of Social Justice and Empowerment (Minorities Division) has been placed before us. On behalf of the Union of India, the learned Standing Counsel makes a statement that Affidavit will be

filed as soon as they receive it. Statement accepted.

6. In paragraph 5 of the said Affidavit it is set out as under:-

> " 5. I say that no income either from salary or agricultural land in respect of class III and class IV employees of State or Central Government is to be included for the purpose of expression "income from other source" as appearing in clause (b) of column 3 vis-a-vis entry at Clause VI of the schedule to the said Office Memorandum i.e. for determining the "creamy layer" ".

Paragraph 6 thereafter reads as under:-

> " 6. I say that the class III and class IV employees do not come within the exclusion clause merely because their income from service of agricultural land exceeds the ceiling prescribed under clause (a) of column 3 of the schedule to the said Office Memorandum dated 8-9-93".

From the paragraph 6 of the Affidavit it is clear that the stand of the Union of India in the Affidavit is that Class III and Class IV by holding such posts, do not fall within the Creamy Layer unless they have income of more than Rupees One lakh, from income other than salary or agriculture.

Admittedly, on the Petition as it stands and the averments which are not controverted, the parents of the Petitioner fall in Class III. Once that be the case, considering the contents of the Affidavit dated 14th July, 2003, in paragraphs 5 and 6, the parents of the Petitioner will not fall in the Creamy Layer. In that light of the matter, Petitioner will be entitled to a Caste Certificate without showing that his parents fall in the Creamy Layer. Considering the above, it is clear that the Petitioner will be entitled to a Caste Certificate in the Non-Creamy Section unless there is other material before the Issuing Officer that the parents of the Petitioner have income other than income from salary or agriculture which is more than Rs.1,00,000/-.

7. Considering the stand of the Union of India and so that other students similarly situated or those others desirous of getting the Caste Certificate hereafter have not to move the Court,the Respondent No.1 and/or the Caste Scrutiny Committee is directed to consider the Affidavit filed by the Union of India before this Court at paragraphs 5 and 6 which have been adverted to earlier in the course of this Judgment. In the light of that, the following Order:-

The Deputy Collector is direct ed to issue to the Petitioner a Caste Certificate without taking into consideration the salary of the Petitioner's parents as Class III employees. The Certificate to be issued forthwith, at any rate, within 48 hours from today.

Considering that the Petitioner had applied to Respondent No.5 for admission to the Goa Medical College, the Respondent No.5 is directed to consider the case of the Petitioner for admission based on the Certificate to be now issued and the percentage that he has obtained even if the admission process has been closed considering that the Petitioner was before this Court and Respondent No.5 was also Respondent to this Petition.

Rule in the aforesaid terms. There shall be no order as to costs.

P.A. to issue authenticated copy. All parties to act on the authenticated copy. Order accordingly.

P.V. HARDAS,J. **F.I. REBELLO,J.**